

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT CINCINNATI**

Slush Puppie Limited,

Plaintiff/Counterclaim Defendant,

Case No. 1:19-cv-189

v.

Judge Michael R. Barrett

The ICEE Company,

Defendant/Counterclaim Plaintiff.

ORDER

This matter is before the Court on Plaintiff Slush Puppie Limited's ("SPL") Motion to Strike New Purported Evidence Set Forth in Defendant The ICEE Company's ("ICEE") Reply Memorandum¹ and Correct the Mislabeled Record. (Doc. 139). ICEE filed a memorandum in opposition (Doc. 143), to which SPL replied (Doc. 145).

On April 16, 2021, ICEE filed a Motion for Preliminary Injunction against SPL. (Doc. 103). An evidentiary hearing was held on August 30, 2021. (08/30/2021 Minute Entry; Doc. 122 SEALED Transcript of Proceedings (afternoon session); Doc. 123 SEALED Transcript of Proceedings (morning session)). ICEE filed its post-hearing brief on September 17, 2021. (Doc. 127). SPL filed its post-hearing brief on October 1, 2021. (Doc. 132 SEALED). ICEE filed a post-hearing reply on October 6, 2021. (Doc. 134). SPL's Motion to Strike and Correct the Mislabeled Record (Doc. 139) followed.

SPL complains that ICEE "improperly filed an extrinsic exhibit and interjected a new argument" in its post-hearing reply:

Twelve days before the [August 30, 2021] hearing, Frozen Brothers² incorporated a [**new**] company called "Slush Puppie LTD." Exh. A,

¹ (Doc. 134, Post-Hearing Reply Memorandum of Law of Defendant The ICEE Company in Support of its Motion for Preliminary Injunction).

² SPL changed its name and brand from Slush Puppie Limited to Frozen Brothers Limited on November 17, 2020. (Laura Peters decl., Doc. 105-1 ¶ 3).

Incorporation Documents. The company was incorporated by Peter Splatt, who is in charge of SPL's digital team. [L. Peters Aug. 23, 2021 Dep. 43:16-44:6.]

(Doc. 139 PAGEID 3796 (quoting Doc. 134 PAGEID 3685)). SPL explains that “[t]his incorporation is unrelated to anything with this case or the issues before the Court. As a result, the purpose of the Motion is to clarify and correct the problem caused by mislabeling Peter Splatt as a Frozen Brothers Limited (“Frozen Brothers”) employee, and to strike the purported evidence raised for the first time in the Reply.” (Doc. 139 PAGEID 3796).

The Court has carefully reviewed—and is persuaded by—ICEE’s memorandum in opposition (Doc. 143) and the 28 exhibits (Docs. 143-1 through 143-14; Docs. 144-1 through 144-4 SEALED; Doc. 143-19; Docs. 144-5 through 144-9 SEALED; Docs. 143-25 through 143-28) offered in support. In contrast, SPL’s reply (Doc. 145) falls completely flat. For the reasons set forth in ICEE’s memorandum in opposition (Doc. 143), SPL’s Motion to Strike and Correct the Mislabeled Record (Doc. 139) is hereby **DENIED**.

IT IS SO ORDERED.

/s/ Michael R. Barrett
JUDGE MICHAEL R. BARRETT